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Attorneys for Defendants Jackie Crawford and
the State of Nevada *ex rel.* its Department of Corrections.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROY ALAN O'GUINN,

Plaintiff,

vs.

JACKIE CRAWFORD, *et al.*,

Defendants.

Case No. CV-N-05-0007-ECR-(VPC)

**OPPOSITION TO MOTION FOR
APPOINTMENT OF COUNSEL**

Defendants, Jackie Crawford and the State of Nevada *ex rel.* its Department of Corrections, by and through their attorneys, Brian Sandoval, Attorney General of the State of Nevada, and Nhu Q. Nguyen, Deputy Attorney General, oppose Plaintiff's "Motion and Notice that Federal Public Defender Appointed on Plaintiff's Federal Habeas."

This Opposition is made and based upon the following Memorandum of Points and Authorities and all other papers, pleadings and documents on file herein.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **NATURE OF THE OPPOSITION**

4 Defendants respectfully request this Court deny Plaintiff's motion for counsel because
5 no circumstances exist to support Plaintiff's request that an attorney be appointed to represent
6 him in this action. Furthermore, Plaintiff cannot demonstrate a likelihood of success on the
7 merits, the legal issues are not complex, and Plaintiff can adequately articulate the facts.

8 **II.**

9 **FACTS**

10 Plaintiff is an inmate currently incarcerated at the Lovelock Correctional Center. On
11 January 31, 2005, this Court filed Plaintiff's second amended complaint (#9¹). A cursory
12 review of Plaintiff's complaint reveals that Plaintiff alleges two counts of violations of his civil
13 rights pursuant to 29 USC § 794 and 42 USC § 12101. See #9, p. 4-5. Specifically, Plaintiff
14 alleges that he is denied access to certain "programs" and "benefits" because of his "mental
15 illness," and that his "disabilities" are not being accommodated. *Id.* On February 23, 2005,
16 Plaintiff filed a motion requesting this Court appoint counsel to represent him in this matter
17 (#14).

18 **III.**

19 **ARGUMENT**

20 Plaintiff states that the Federal Public Defender was appointed to represent him in an
21 unrelated habeas corpus proceeding and asserts that "[i]t would be both judicially economic
22 and legally streamlined for this case to also be effectuated by the federal defender's office."
23 #14, p. 1. As this court is aware, a habeas corpus proceeding is not the same as a civil rights
24 action. A plaintiff in a civil rights action does not have a constitutional right to court-appointed
25 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *Caruth v. Pinkney*, 683
26 F.2d 1044, 1048 (7th Cir. 1982), *cert. denied*, 459 U.S. 1214 (1983).

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¹ This refers to the Court's docket number.

1 Federal courts are, in limited circumstances, empowered to *request* an attorney to
 2 represent an indigent civil litigant. See 28 U.S.C. § 1915(d). However, a motion for
 3 appointment of counsel is rarely granted because a district court will request counsel for an
 4 indigent civil litigant pursuant to section 1915(d) only when exceptional circumstances exist.
 5 *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Aldabe v.*
 6 *Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980); *Gorenc v. Salt River Project Agr. Imp. & Power*,
 7 869 F.2d 503, 509 (9th Cir. 1989) *cert. denied* 493 U.S. 899 (1989).

8 A finding of exceptional circumstances, therefore, requires an evaluation of both the
 9 likelihood of success on the merits and the ability of the petitioner to articulate his claims pro
 10 se in light of the complexity of the legal issues involved. Neither of these factors is dispositive
 11 and both must be reviewed together before reaching a decision. *Terrell v. Brewer*, 935 F.2d
 12 1015, 1017 (9th Cir. 1991); see also *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).
 13 The district court is given considerable discretion in determining whether appointment of
 14 counsel is necessary. Moreover, appellate reversal of trial court denials of motion for
 15 appointment of counsel are rare. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 800
 16 (9th Cir. 1986).

17 In his motion, Plaintiff simply states that he "has had to rely upon others to assist
 18 him . . . [to initiate] this instant action." It is well-known that prisons often have "law clerks"
 19 that assist other inmates in court proceedings. #14, p. 1. It is also well-known that inmates
 20 will often assist each other with court proceedings. Plaintiff's statement failed to demonstrate
 21 how his reliance "upon others" is different from other inmates' reliance on others to assist
 22 them in their court proceedings. Accordingly, Plaintiff failed to establish that exceptional
 23 circumstances exist such that this Court should appoint counsel to represent him in this
 24 matter. Furthermore, Plaintiff has neither addressed nor established the likelihood that he will
 25 be successful on the merits of this case. Finally, this is not a complex case and only involves
 26 allegations that Defendants are not accommodating Plaintiff's "disability" and are denying him
 27 access to certain "programs" and "benefits."

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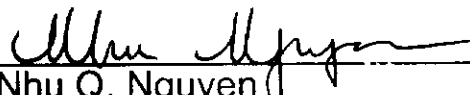
IV.

CONCLUSION

This instant action is not complex. Additionally, Plaintiff has failed to demonstrate exceptional circumstances and likelihood of success on the merits. Based on the foregoing, Defendants respectfully request this Court deny Plaintiff's motion for appointment of counsel.

DATED this 11th day of March, 2005.

BRIAN SANDOVAL
Attorney General

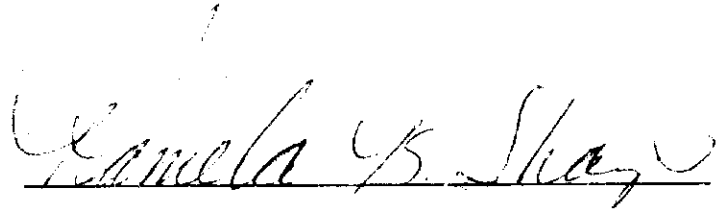
By 
Nhu Q. Nguyen
Deputy Attorney General
Litigation Division

Attorneys for Defendants.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 11th day of March, 2005, I served a true and correct copy of the foregoing OPPOSITION TO MOTION FOR APPOINTMENT OF COUNSEL by depositing for mailing with the U. S. Postal Service to the following:

ROY ALAN O'GUINN #67905
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P O BOX 359
LOVELOCK NV 89419-0359


Pamela B. Shays

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